

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
AUGUST 4, 2020**

**BOARD
ANNOUNCEMENT
6:00 PM**

Chairman Dyck made an announcement that the meeting would be slightly delayed in order to give them time to review the comments received when they had arrived this evening. He also announced that file FCU-20-04 had been postponed, at the request of the applicant, to the September 1, 2020 meeting

**CALL TO ORDER
6:14 PM**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:16 p.m. at the Trade Center Building at the Flathead County Fairgrounds, 265 N Meridian Road, Kalispell, MT 59901. Board members present were Ole Netteberg, Gina Klempel, Tobias Liechti, Cal Dyck and Roger Noble. Erik Mack and Erin Appert represented the Flathead County Planning & Zoning Office.

There were 47 members of the public in attendance.

**APPROVAL OF
MINUTES
6:15 PM**

Klempel motioned, seconded by Noble, to approve the July 7, 2020 minutes as written.

The motion passed unanimously on a roll call vote.

**PUBLIC
COMMENT
(Public matters that
are within the
jurisdiction of the
Board 2-3-103
M.C.A)
6:15 PM**

None

**APPEAL
(APPEAL 20-03)
6:16 PM**

An appeal by Brian M. Joos. Esq. on behalf of Montana Personal Warehouse I, LLC, regarding a decision made by the Zoning Administrator to refuse to process an application for a conditional use permit for a 'mini-storage' facility to be located at 5850 Highway 93 South near Whitefish, MT within the Blanchard Lake Zoning District. The appellant argues that the Zoning Administrator erred in boxing the proposed project exclusively into 'mini-storage' when they feel it is not true mini storage, but rather personal warehouse space in which a variety of permitted and conditional uses could take place on the parcel.

**APPELLANT
6:18 PM**

Brian Joos with Viscomi, Gersh, Simpson, & Joos, PLLP Attorneys at Law, 121 Wisconsin Ave, represented the applicants, Montana Personal Warehouse I, LLC. He started by saying that the proposed structures, the personal warehouses, would be a great fit for the property. There were [allowable] uses for this property that would have more of a negative impact on the appearance of the corridor than what they were proposing. He discussed the allowable uses that could be used on the property at length. He felt this facility would blend in esthetically with what was already there.

The crux of the appeal was the strict classification of the proposal as being mini storage. That was not what they were. There were 12 conditional and permitted uses to which the structures could be put when they were sold to the owner. He listed the uses within the zoning and covenants of the property. He did not want the applicants to be pigeon-holed into mini storage when there were multiple uses that the buildings could be used as.

He addressed that there was a prohibition against vehicle storage, under the mini storage special requirements, due to the concern of fire danger. When you look at a typical mini storage it might be true, but this storage unit was not engineered that way. He discussed the engineering and plans in great detail.

He felt the project should have the opportunity to move forward. The board had the ability to condition the approval in order to address any concerns that they may have.

**BOARD
QUESTIONS
6:23 PM**

None

**STAFF REPORT
6:24 PM**

Erik Mack reviewed staff report Appeal-20-03 for the board.

**BOARD
QUESTIONS
6:28 PM**

Netteberg questioned if the applicants would have the opportunity to come back to get the text amendment and apply for the conditional use permit if this appeal was denied. Staff confirmed that, if the appeal was denied, the conditional use permit could be put on hold until the text amendment was approved.

**PUBLIC
COMMENT
6:29 PM**

None

**APPELLANT
REBUTTAL
6:30 PM**

Joos did not understand the position [of staff] saying that it did not fit into any sort of use. The applicants had developed these around the country and they were very commonly used as office space, food manufacturing packing, and so

on. He wasn't sure why those uses could not take place on this property. The vehicle storage/mini storage, was only one use that some of the owners might put into these units, others would be built out in other ways for other functions. There was some protection in the covenants that required the owners association and individual owners to have fire insurance to protect them from damage should that ever happen.

**BOARD
DISCUSSION
6:31 PM**

Liechti was in general agreement with the staff because it was closer to a mini storage than anything else, although it could be used for several different things. He felt they were trying to stick a square peg in a round hole and needed to be named as one thing and not several things. He felt it might be suited with a different lot or a text amendment to address their issues.

Netteberg did not have any comment.

Klempel said that in the past they had always had combustibles stored outside. She saw how this fit as a mini-storage. She felt they would be better suited to get a text amendment. The board had been forced, in times past, to put the cart before the horse and she felt that needed to change. She had seen everything she needed to see, and was looking at a Montana Personal Warehouse. There was nothing in the regulations at this point and it was hard for them to see something that just wasn't there.

Noble said he reviewed the analysis from staff and was in agreement with it. He read part of the regulations where it specifically stated that they cannot store gasoline engines or storage tanks in this situation. He felt the regulations were pretty clear. For that reason, he concurred with the rest of the board.

Dyck agreed with Liechti. He appreciated the creativity from the applicant to bring something to the community that would be beneficial but they were putting the cart before the horse.

**MAIN MOTION
TO DENY
APPEAL
(APPEAL-20-03)
6:25 PM**

Dyck made a motion, seconded by Klempel, to deny APPEAL-20-03.

**ROLL CALL TO
DENY
(APPEAL-20-03)
6:25 PM**

The motion passed unanimously on a roll call vote

**STARLINE
FLIGHTS LLC
(FCU-20-05)
6:36 PM**

A request by Starline Flights, LLC for a conditional use permit for a mini-storage facility on property located at 5850 Highway 93 South near Whitefish, MT within the Blanchard Lake Zoning District. The property is zoned BS/HO (Business Service District/Highway Overlay) and contains 9.1 acres

**BOARD
DISCUSSION
6:36 PM**

FCU-20-05 was contingent on APPEAL-20-03 being approved. Because it was denied, it was discussed that FCU-20-05 needed to be tabled until the text amendment application was approved.

**APPLICANT
AGREED TO
TABLE
(FCU-20-05)
6:37 PM**

Joos agreed that the file should be tabled. It was his understanding that the text amendment would be reviewed at the next Planning Board meeting.

**MOTION TO
TABLE
(FCU-20-05)
6:37 PM**

Netteberg motioned, seconded by Noble, to table FCU-20-05 until the text amendment had been passed by the Planning Board.

**BOARD
DISCUSSION
6:37 PM**

Noble suggested they amend the motion to say it should be tabled for 60 days. Staff expressed that 60 days would not be long enough because it needed to be brought before The Commissioners. Staff suggested it be tabled until the final resolution with Commissioners and he would bring it back after that happened.

**ROLL CALL TO
TABLE
(FCU-20-05)
6:37 PM**

Motion passed unanimously on a roll call vote.

**NORTH FORK
CABINS LLC
(FCU-20-06)
6:39 PM**

A request by North Fork Cabins, LLC, Heather Matthews, for a conditional use permit to operate a Camp and Retreat Center on property located at 8954 and 8958 North Fork Road, Polebridge, MT within the North Fork Zoning District. The property is zoned 'North Fork' and 'Scenic Corridor' and contains approximately 15 acres.

**STAFF REPORT
6:39 PM**

Erin Appert reviewed staff report FCU-20-06 for the board.

**BOARD
QUESTIONS
6:41 PM**

None

**APPLICANT
PRESENTATION
6:41 PM**

None

**PUBLIC
COMMENT
6:42 PM**

Gerry Stearns, 635 Moose Creek Rd., spoke in opposition of the application. She said the applicant had already started using it for the proposed purposes. A large event was planned for the middle of August. It was advertised that transportation would be provided from West Glacier but she questioned where people were going to park in West Glacier. She was concerned about the traffic impact and the lack of detail in the application. There were inconsistencies in the proposal.

Jack McFarland, 175 Hutton Ranch Rd., spoke in opposition of the application. He was in agreement with the recommendation of denial from North Fork Land Use Advisory Committee (NFLUAC). He was concerned about the lack of information in the application.

John O'Hara, 1661 Paradise Ridge Trl, spoke in opposition of the application. He hoped the board would appreciate the care and concern of the people in the North Fork. He was concerned about being inundated with people and the negative impact that it would have (i.e. crime and lack of authority).

Elizabeth Holbrook, 13455 Northbrook Rd., spoke in opposition of the application. She emphasized the problem that they had was that it was hard to differentiate between the two applications because they seemed to mirror one another. She was very concerned over the numbers. She pointed out the website advertised that they were planning on developing something that could accommodate 2000 people. It was those uncertainties she hoped would move towards denial.

Lynn Ogle, 296 Kintla Ranch Rd., spoke in opposition of the application. He had worked for the sheriff's department and clarified that there was law enforcement there but access was 2 hours away. He was very concerned over the fire hazard in an uncontrolled campground. He was on the NFLUAC and said the applicant had not given the board any plausible reason why they should agree with it. He felt it was nothing more than a ploy to get this property and the next property together to make "it work". He did not think that it was fair.

Larry Wilson, 281 Kintla Ranch Rd., spoke in opposition of the application, as well as all three of the conditional use permits being presented tonight. He said the people here was a demonstration from the people from North Fork. He discussed the process to get the North Fork Neighborhood Plan and how difficult it was; 67% of the people in the area had signed on. He said the three conditional use permits would destroy the North Fork Plan.

**BOARD
DISCUSSION
6:56 PM**

Liechti asked why the applicant was not present. Liechti said it would have been nice to get details from them. He felt the county was generally accepting of things, if gone through the proper steps, but this seemed to not be the case. He was going to have a hard time accepting this one.

Netteberg was shocked the applicant was not there. He clarified with staff that there was not a violation file opened on this property. He was shocked that they were still operating.

Noble understood Planning and Zoning had to accept the applications that were submitted and process it. He felt they did a good job. The proposed plan exceeded what could legally be done. He did not feel like it fit into the North Fork planning scheme.

Klempel had looked at the drawing and felt it was incomplete. She had a problem with camp and retreat centers where the general public was not restricted from use. She felt they needed to look at the regulations and not put the cart before the horse.

Dyck recognized that the North Fork neighborhood had put a lot of effort into a plan to protect their community in what they wanted to see in growth. He felt like what was before them did not fit in that plan. It concerned him that the applicant was not here to address them. He felt the application was incomplete because there were too many questions and not enough answers.

**MAIN MOTION
TO ADOPT F.O.F.
(FCU-20-06)
7:03 PM**

Noble made a motion, seconded by Netteberg, to adopt staff report FCU-20-06 as findings of fact.

**ROLL CALL TO
ADOPT F.O.F.
(FCU-20-06)
7:03 PM**

Motion was passed unanimously on a roll call vote.

**MAIN MOTION
TO DENY
(FCU-20-06)
7:03 PM**

Noble made a motion, seconded by Netteberg, to recommend denial of FCU-20-06.

**ROLL CALL TO
DENY
(FCU-20-06)
7:04 PM**

The motion passed unanimously on a roll call vote

**NORTHERN
LIGHTS LAND,
LLC
(FCU-20-07)
7:04 PM**

A request by Northern Lights Land, LLC, Susan Evans, for a conditional use permit to operate a Camp and Retreat Center on property located at 8950 North Fork Road, Polebridge, MT within the North Fork Zoning District. The property is zoned 'North Fork' and 'Scenic Corridor' and contains approximately 4.9 acres.

**STAFF REPORT
7:04 PM**

Erin Appert reviewed staff report FCU-20-07 for the board.

**BOARD
QUESTIONS
7:06 PM**

Klempel asked what the width of the road was. Staff did not have the exact measurements but said it was wide enough for two cars and opened up into a parking lot.

**APPLICANT
PRESENTATION
7:07 PM**

None

**PUBLIC
COMMENT
7:08 PM**

Lynn Ogle, 296 Kintla Ranch Rd., spoke in opposition of the application. He said the road was wide enough to accommodate an RV. This was the location of the former Home Ranch Store. It was also the bar. It was not operated in the summertime for the past 2 or 3 years (except for a small number of times). The bar still owned the licenses for that property. The applicant did not present anything to the NFLUAC at their second meeting. He felt the applicant was trying to grasp for something to put together that might be better than what she has. The store was not the appropriate place for an RV park. The former owners had originally put in 4 spaces along the road that had water and sewer, however, it went into a septic system that he wasn't sure was even functional. He felt her site map was impossible the way she had it set up. He was concerned about the fire hazard and the emergency response time.

Larry Wilson, 281 Kintla Ranch Rd., spoke in opposition of the application. He pointed out that the applicant had not shown up to either NFLUAC meetings. He said that NFLUAC was not opposed to all commercial activity and that was why 1 rental cabin was allowed per 5 acres. They had spent years putting the [North Fork Neighborhood Plan] together.

Heather Matthews, 8950 North Fork Rd., was the applicant. Susan Evans was not here but she felt she could represent them both. She had gone to the first NFLUAC meeting and expressed her intention, given on the application, that she simply wanted camping. She was not asking for an RV park. She wanted people to be able to camp on her property when they come and drink and enjoy their time. If they wanted to stay for the weekend, she wanted them to do so. She felt this reduced the impact on the North Fork. It allowed people to be safe and she felt that it was pertinent. She was available for questions. She reiterated that she was not asking for RV, septic, or any of that. She was

**BOARD
QUESTIONS
7:16 PM**

simply allowing people to tent on her 15 acres, with cabins, as well as the 5 acres with the store and the ranch. There were 20 acres combined. She said they were separate entities and recognized they were two separate applications. She felt that some of the information from the public comment was not truthful and she was glad to clear up anything or answer questions.

Noble listened to her testimony but said the application for the Northern Lights Land stated there would be 11 RV camping sites and 15 [tent] camping sites. Matthews said she had spoken to staff, after they had put that [into the staff report], and said that was not what she was looking for and felt it had been misinterpreted. She was happy to take that out because that was not what she was looking for.

Netteberg asked how many camping spaces she would end up with. Matthews said she did not know. It depended on how many people there were. If they only allowed a certain amount, then that was what she would go by.

Dyck asked about the 5 existing trailer hookups and if she was looking at removing them [from the proposal] and using that as a tent site or wondered if she was wanting to keep that as a viable option. She said they were just there and felt that it was too much to take them out but she did not use them and they had never been used. That was not what she was looking for. She said she was not looking to run an RV or campground. Dyck clarified that she was just looking for the opportunity to allow people to have a safe place to stay, in their tent, as a free service for people who had been drinking. He asked if she would be charging and she said it would be a free [service].

Dyck also asked for clarification as to what was on the property and what the COSA allowed.

Dyck asked staff if there needed to be licensure if there was no money transferred [because she implied that it would be a free service]. Matthews said she was told by planning that she needed a permit to allow for that. Staff said under North fork zoning, you were allowed to have a private RV and camping use; the placement of an RV or tent on a parcel of land that may or may not contain a residence, for private non-commercial use for the land owner or guest. A public campground, or camp and retreat center, would need a conditional use permit.

Mack added that the private campground is a permitted use, and if the board determined that what she was asking for was a private campground, then they would not be able to condition it. If it was associated with her other businesses, he questioned if you could make an argument that this was a commercial use, but if they determined that it was then they could condition it.

Dyck asked Matthews to confirm that she was asking for a private campground, where people could stay in their tent at no charge. Matthews said it was a very gray area but essentially yes. Dyck agreed [that it was a gray area] and that was what they needed to figure out. Matthews said she was a business and she was trying to do it in a way that was proper and right.

Dyck asked Mack about the definition in the North Fork area for recreational vehicle camping private, was without conditions but there would be responsibilities that she would have to adhere to or was it too vague? Mack said the only thing that they had was the definition that was read. It would fall back on DEQ or Environmental Health. If recreational vehicle camping, and not just tent camping, then they would have to go through subdivision review regardless of if they were charging money or not. She would need to do tent camping. She would have to work with Environmental Health and DEQ for the correct permit. Matthews asked "just for the RV?" Dyck clarified that if she tried to do more than 2 RV lots that would be considered subdivision review. If she was just going to have tent camping she would still need to work with DEQ and Environmental Health to see what would work and would not work. If she did not have the proper facilities for 50 people tent camping, she was going to get in trouble. He said she needed to figure out a way to work it out with DEQ but would not need to come before this board. For that outcome, she would need to work with DEQ, Environmental Health, and the Planning office to see what she would be allowed to do without going for a conditional use permit. Dyck did not see having 3-4 tents as being an issue but if she was going to have 10-12 then it would be an issue, what would she use for bathroom facilities? That was his personal opinion, not necessarily coming from the board.

Matthews said she worked side by side with DEQ and the Health Board every day. Dyck said he knew that, with her liquor license, she had certain responsibilities that she had to fulfill to make sure all her licensures were current and in good faith.

Dyck wondered if Matthews wanted to retract the conditional use permit or [he asked the board] if they just wanted to deny it. Noble suggested she table it until she comes back with what she really wanted to do. Dyck said that they were trying to help her walk through this without creating a massive amount of red tape and also to keep the community informed so that they were all going into the same direction. Matthews thanked him for that and said that it had been a very challenging trying to move forward with such vague information. She received different answers from different people and there was a lot of gray area. If she could go without the permit and have 50 people camp on her property, and only needed to talk to DEQ, she was happy to do that.

Dyck said he didn't know if she could do 50. She said she had a lot of friends. What he was saying was that she would need to propose that scenario to DEQ

and Environmental Health in that it was a private area and she would not be charging. Once you put an RV site, or 2 RV's that would have to go through subdivision review and that was a whole other world. Matthews said she knew that and that was why she was not here for an RV.

Noble said she needed to decide if she was going to charge or not charge. Matthews said that she was not charging for camping. She may charge for music or something along those lines, but she would not be charging for camping. Dyck said that she was opening up another box. Matthews said that was why she was asking for the permit – she was a business and ran a business. She was selling things and if she sold something at her business and they wanted to stay to camp, then.....she was going to charge for things, absolutely.

Noble said the problem was that she has given them 3 different application in the last 5 minutes. He said she needed to decide what she wanted to do. Matthews interjected that she already knew. Noble continued that [after deciding what she wanted to do] she then needed to come back before the board. If she wasn't going to charge for any of the tent units, that was a different situation. Matthews wanted to clarify that she would not be charging for tents. She wanted tents on her property and she did not want to charge them to camp. However, she is a business, she does sell things, and she will be charging them for things that she sells at her business. Dyck said if she decided to have an open venue with music then that becomes a whole other animal again. That was something that would then come before the board. They were hearing multiple possibilities of a conditional use permit. He was trying to figure out how to help her move forward without going through all the red tape but she was creating more red tape. They needed to be careful to make sure that they all understood what she wanted to do because a music venue would need a conditional use permit for that event and what all does that look like. It needed to be spelled out and that was what the community needed as well; they needed to know what her plan was.

Dyck was confused by everything that was going on and suggested that they table it for 30 days so that they could get a clear understanding of what she wanted to do on the property. The Planning Department could help her walk through that. (i.e. if you step over the line, it would mean a conditional use permit or if you stayed on this side it would be an approved condition in the North Fork area). They could help her walk through that so that she would be happy, the community would be happy, and she would be generating income. Matthews said that sounded great.

Dyck moved to motion to table it for 30 days until they knew the direction it was going. Matthews asked if she could have tents on her property now if she talked with DEQ and Health Department. Dyck said if there was a handful yes, but if she went over that she was going to have more issues. If she was

going to have music, she was going to be in violation and he did not want her to go into violation. She said ok. Dyck reiterated if she had 50 tents she would be stepping over "the line". She asked if staff would read her the paragraph again on what would be acceptable camping. Staff read from the regulations. Matthews said it did not clarify the number. Dyck asked if she lived on the property. Dyck read the definitions again. He said they were talking about more of a singular use in terms of a private use and not multiples in terms of commercial use.

Matthews said she preferred not to table it and was still wanting to request tenting use on her property. Dyck confirmed that she still wanted to move forward and she replied that she wanted to have tents on her property.

Noble said there was a problem with that because the application was for a camp or retreat center, which was a different conditional use than recreational vehicle or camping. There was a discrepancy there. His opinion was that it should be tabled and she should revisit it with the planning staff and figure out what exactly her intent was and then come back. Matthews replied that she had been to the Planning [Office] so many times and that was the request that they asked her to put in after telling them what she wanted to do. Noble said that was because, at the time that she came in, that was what they understood but tonight in her testimony she kind of changed that. They were getting two different scenarios.

Matthews asked for clarification on the second one.

Netteberg clarified that if [the board] voted for this, and voted it down, it was over. Matthews asked if that was for all special use permits. Netteberg said they were trying to help.

Mack said that if the board were to vote and deny this, she would have to wait a year to reapply. She asked if that was for any special use permits. Mack replied for this particular use of a camp and retreat center. Matthews said she could understand that but she just wanted tents on the property, was she applying for the wrong thing? Mack said that the issue was that she started talking about the music venue and to do that she would need the camp and retreat center. If she just wanted to do tent camping, it would be the recreational vehicle or camping public. Those were two different things and she had applied for a camp and retreat center and that was to allow for the music venue that she had mentioned. If she wanted something else, like just tent camping, she needed to revise her application and come back.

Matthews asked if the public camping was for charge. She was not asking to charge for camping. She wanted to clarify that. Mack replied that the North Fork zone did not have a definition for public use camping so his guess was that she could just change it from non-commercial to commercial use if she

switched to public. Matthews said it was just very challenging, very vague. She said to just table it but she wondered how they were going to move forward if the answers were not there to begin with. Netteberg said she had to find the answers. Matthews said she had been asking questions for a year so she did not know how much time....she just didn't know where to go to get answers and it was very challenging. She said she would table it and go to the planning [office].

Dyck said that a suggestion would be that she should find a consultant to help her walk through it. He didn't know if she had been navigating this on her own but a firm might be able to help her find a way to do the things she wanted to do. They work with these things all the time and they can see what fits all the rules. This way she could look at all the pros and cons and give her better options and understanding.

Dyck asked if there needed to be a motion. Staff replied if she voluntarily tabled it, there did not need to be a motion.

Someone from the audience wanted to speak because the public hearing had not been closed. Staff said that it had been tabled at the applicant's request so they could move on to the next file.

**MONTANA
YOGA
ADVENTURE,
LLC
(FCU-20-08)
7:42 PM**

A request by Montana Yoga Adventure, LLC, for a conditional use permit to operate a Camp and Retreat Center on property located at 1070 Numa Peak Lane, Polebridge, MT within the North Fork Zoning District. The property is zoned 'North Fork' and 'Scenic Corridor' and contains approximately 5.3 acres.

**STAFF REPORT
7:43 PM**

Erin Appert reviewed staff report FCU-20-08 for the board.

**BOARD
QUESTIONS
7:45 PM**

None

**APPLICANT
PRESENTATION
7:45 PM**

Brooke Allison, 1070 Numa Peak Lane, reviewed the proposal for the yoga studio within the house and explained she had dreamt of extending it to a camp and retreat center. The intent behind this proposal was to get people out of the city and give them a chance to slow down (i.e. yoga, hiking, and experience Glacier Park). She wanted to give back to others. She never intended to cause stress. The proposal was for 12 people over two lots (5.3 acres). She felt this was a reasonable amount given that two residences could be on the two lots and felt the density was appropriate given the lots. She proposed 4 retreats per year, starting in 2021. She understood that this was the first step in the process and she would need the COSA rewrite and other licensures to conduct the

retreat activities. She agreed with the findings of facts and had met the requirements, except septic approval, however they had since improved the property with a 5 bedroom, 150,000 gallon, septic system which was approved by Environmental Health. Upon approval from all the appropriate agencies, they would then build the bathroom facility tied into the new septic system.

She addressed the public concerns. She had three neighbors that were close and were in support (but not able to be here tonight). She addressed statements made in an email that had spread throughout the community. The email included 10 statements that she felt were false. She rebutted each statement individually. She said, given the county's assessment that the board had in their packet, it supported the fact that the statements on the petition were not founded. She did not believe that [approving this conditional use permit] would set a precedent in North Fork because each CUP would be individually evaluated. Everybody who submits an application goes through the process of review and she did not feel like this use would set a precedent in the future. She said the permit would stay with the property owner and not follow the property. She reiterated that the proposed use was a quiet yoga retreat for finding stillness, meditation, getting back to simple living and not to disturb any neighbors; with implemented quiet hours, considerations were given to the residential nature of the lane. She felt it was consistent with the values, and they had a good respect of the values of North Fork and the heritage that exists there. They wanted to be a part of it in a respectful and neighborly way.

**BOARD
QUESTIONS
7:55 PM**

Klempel asked if they had purchased the property as two parcels or one. Allison replied she had purchased it as two. Klempel also asked if Allison had ever seen forest fires. Allison replied that she had grown up in forested areas. Klempel replied that the North Fork was pretty unique and she had seen many [fires]. Klempel felt that her fire prevention plan was not adequate for a forest fire. Allison said the mitigation was the fact that it would be less people than, or about the same amount of people, that the two parcels would support. Fires would not be allowed during fire danger seasons. She was listing mitigation methods and not saying that it would do anything for forest fires. Klempel commended her for forest management and the fact that she tried to mitigate some of the fire danger.

Noble said it was listed as 4 tracts so he thought it might be four different parcels, not two. Staff explained the confusion as to what a tract was and how sometimes they are sold as combined parcels. Sometimes things show up on GIS as multiple tracts but they are not. Noble asked what the tent capacity was. Allison replied two people each.

Netteberg asked if they were running summer or winter. She said just summer. He referenced that people were going to be shuttled in and wondered if she expected people to only be flying in. She said mostly people would be

flying in but she had addressed a few extra potential cars. There are some local Whitefish yoga businesses that they might do a weekend workshop that might draw local folks.

Liechti asked how long a typical retreat would be. She answered about 5 days. He questioned if she would be open to having conditions on how many retreats they could have as well as how many people could be there.

Dyck asked about the bathhouse and having that tied into the septic. She discussed having a COSA rewrite so that the well would support both parcels.

**AGENCY
COMMENTS
7:42 PM**

There were no public agencies present to comment. The staff reviewed the written comments during the staff report presentation.

**PUBLIC
COMMENT
8:08 PM**

Clay Allison, 1070 Numa Peak Lane, was in support of the application. Their intention was to give people the opportunity to experience something they might not normally have the opportunity to experience.

Randy Kenyon, 77 Moose Creek Rd., spoke in opposition of the application. He read the North Fork Land Use Advisory Committee recommendation letter for denial, which had also been submitted to the BOA for review prior to the meeting.

Karin Colby, 1182 Numa Peak Ln., spoke in opposition of the application. She read her letter of opposition, which had also been provided to the board for review prior to the meeting.

Elizabeth Holbrook, 13455 Northbrook Rd., spoke in opposition of the application. She thanked the board for recognizing the critical nature of the density piece of their neighborhood plan. She said the applicant's proposal had morphed. In addition to the 4 retreats with 12-14 people, people had pressed the applicant to stipulate that the cabins and tents would not be for rent when they are not going to be having the retreats. They were told they would not be willing to do that. They would be rentals and not donation based, so they were dealing with a situation where there would be high density rental, which if that activity were permitted, would toss the neighborhood plan out the window.

Jack McFarland, 175 Hutton Ranch Rd., spoke in opposition of the application. He was in agreement with what had been shared before. He pointed out the thinly veiled ways people approached the board to justify why they did not fall under the rules, in order to get around the rules. He pointed out that it was still a commercial enterprise and there was a lot of effort that went in to making sure that commercial enterprises would be limited.

Jan Caldwell, 1210 Numa Peak Ln., spoke in opposition of the application.

He discussed the subdivision that he had bought into. He mentioned Flathead County Resolution #2143 and discussed the intent behind the North Fork Neighborhood Plan. He was concerned about the 4 tents that were added in, that were presently being rented out. He did not feel it was appropriate and read the goals of the North Fork Neighborhood Plan.

Don Sullivan, 1700 North Fork Rd., spoke in opposition of the application. He addressed the extensive advertising on the internet for glamping, hiking, kayaking, site seeing, and yoga. He did not feel the applicant was up front with their intent. He said they were told there would only be 12 people but there could be an additional 12 people that lived on the property. He discussed “what the harm” would be. He was concerned about the increase of density.

BOARD BREAK

8:24 PM

BREAK ENDED

8:33 PM

Lynn Ogle, 296 Kintla Ranch Rd., spoke in opposition of the application. He was concerned about the fire hazard. He did not think that law enforcement would be needed because it was a low innocuous enterprise, however, he was concerned about emergency access for an ambulance. The nearest ambulance would be from Columbia Falls and it would take them at least 2 hours [in good weather condition].

Joyce O’Hara, 1661 Paradise Ridge Trail, spoke in opposition of the application. She was the former owner of the Northern Lights Saloon and Cafe and gave a history of a proper way to go about the proper process of approval; implying that the applicant had not done so. They had gotten to know the people. She said the applicants had not been upfront and honest. She brought up they had a zoning violation against them because they were operating without proper approval. She felt they did not care about the effect on the area. She read (from her phone) an advertisement that included guided hikes, float trips, hot saunas and so on. They were also advertising all meals included and she said they did not have a board appointed kitchen and licensing.

Gerry Stearns, 635 Moose Creek Rd., spoke in opposition of the application. She was concerned about density and said the density had already been violated when [the applicant] put in 3 tents when she should only have 2 rental properties. She was charging a fee and providing food. It was difficult for them to believe that the applicant would bring it into compliance.

Bill Walker, 11233 North Fork Rd., spoke in opposition of the application. He

addressed the things that did not add up to him including having 4 retreats that would be occurring over the summer peak season. That did not include the advertising for rentals that were still up. He was confused about the wall tents that were on wooden platforms, which he believed to be cemented in. The web presence showed that there was a tidy sum for rentals and showed that it wasn't just for pro-bono. He pointed out that they were offering food and drink services. It was not only 4 classes.

Ray Brown, 12533 North Fork Rd., spoke in opposition of the application. He had worked on the addition to the house and had intimate knowledge of the property. He said that the road was not 30' wide, there was an easement, and it was a one-lane road.

Alice Caldwell, 1210 Numa Peak Ln, spoke in opposition of the application. She emphasized that it was zoned for 1 residential and 1 cabin lot. She was concerned about the effects on her own water after a new well was put in. She was frustrated that the neighbors have always gotten along and it was a friendly neighborhood. The [neighbors] had never been approached. They tried to get along with everyone and said they lived in a diverse community. Her peace and quiet was gone and she has been stressed. She said a commercial business belonged in a commercial development, not in a residential area.

Lois Walker, 11223 North Fork Rd., spoke in opposition of the application. She read an email that she had received from Kate with the Environmental Health Dept. regarding the second septic system and what it served. It explained that the current septic was for a 1 bedroom home, which needed to be updated to a 3 bedroom home (as it was today). The applicants were made aware of this. She discussed the protocol they would have to go through for approval. She also read a statement that was submitted to the board, prior to the meeting, for review.

Kevin Halsey, 14815 North Fork Rd., spoke in opposition of the application. He discussed the water right, which was for a single family use, so presumably if there was a change of use, there needed to be a change of water permit as well. He felt that needed to be addressed.

**APPLICANT
REBUTTAL/
COMMENTS
8:57 PM**

Applicant differed to her facts in the proposal, which was written in the permit submittal. Many of the issues were discussed in her presentation. [The public comment] was a clear representation of the heart and pride of the area. It was difficult [for the people of North Fork] to give an unbiased review in North Fork. There were people signing the petition, at the location of the [NFLUAC] meeting. It should have been an unbiased ground. She understood that and felt that this was coming from a place of frustration from people abusing the area and that was a very big concern. She felt this was an opportunity to make an example of one applicant to not violate the North Fork

Plan or the density. She did present her opinion and analysis on the density.

She addressed that the tents were constructed in planning for the retreat. She stated that perhaps she had a little more hope than she should have. They had been used for family reunions. There were accusations that it couldn't have been her family because they were black but she did have family members that were black. They accused her of doing yoga at Sonderson Meadows. That was a few of her instructors that came to visit. They were in groups of two, teaching to each other, in a meadow for 1.5 hours. There were a lot of conjectured misunderstandings and what has been spread about her. That was disheartening to her to be called a thinly veiled plan to profit off of an area when the intention was to share it with others. She felt the overall sentiment was not wanting to share that with others. This was a responsible way to do so. She said she wanted to defer to the facts that were submitted in her proposal, the sustainability plan, and the findings from the county themselves.

**BOARD
QUESTIONS
9:01 PM**

None

**BOARD
DISCUSSION
9:02 PM**

Liechti wanted to propose to the board 4 additional conditions that they might consider to alleviate some of the public concerns. He wanted a condition to maximize the number of people to 12 at any event. He wanted to add a condition the maximum number of events to 4 each year, with each event being a maximum of 7 days. He wanted to add a condition to state the number of campsite allowed would be 4 and maybe rented out a maximum of 28 days (which would be 4 events maximum and up to 7 days maximum). He wanted to add a condition that would allow a maximum of 40 guest vehicles allowed at any one time. That was his first go around and he wanted input if the board wanted to go forward with any of them. If they approved this, he had a hard time seeing the affect less than 50 people a year would have.

Dyck said if they were to look at maximum allowable, and there were two parcels, they were allowed two homes and two guest cabins. That was it. The tent sites would not be part of it.

Dyck asked the applicant if they still had two parcels or if they were made into one. Applicants confirmed they were in fact still two parcels. *[Applicant spoke but was inaudible....]*

Noble asked Mack, if they were going to build, they would be limited to one house and one guest cabin. Mack confirmed that was correct. Noble confirmed that, with a conditional use permit, this was a different "animal". Mack said that there were a couple of different uses that were being discussed. He discussed that single-family residential was permitted. A rental cabin was

permitted, 1 per tract. There is however, this camp and retreat center, which the conditional use standards for camp and retreat centers did not have those sidebars on them. The board could choose to limit it to the 4 total if they wanted to keep that density. The camp and retreat, itself, did not have any density requirements in the conditional use standards.

Klempel said that if it was approved as a camp and retreat center, it pointed out that the general public would not be restricted from such use, and therefore she wondered how restrictions could be placed on something that could not be restricted.

Mack read the regulations and said that his interpretation, and he disclaimed that he was not the planning director nor the Board of Adjustment, was if they did not have an organization (i.e. Boy Scouts or Y.M.C.A.) some person or individual could apply for a camp and retreat center also. Klempel said that she interpreted it a little differently. Mack said that it was the job of the board to tell Planning and Zoning if they were doing it wrong and it needed to be done differently.

Netteberg said he had a hard time with after the fact applications. He also mentioned that they (the board) had to keep any bias out of their positions. Most of the time, when someone came forward with an application, they tried to look at both sides and see if there was something there that could help them, something that would be on the side of the neighborhood plans. They did recognize an end run when they saw it. They still had to go back to, what Dyck and Mack had pointed out, that if they denied it, they still had the opportunity to have two residences and two rentals because they were smart enough to keep them as two separate parcels. Netteberg said [the board] did not have an easy job. He, personally, was not a lover of neighborhood plans because 75% of the time it was strictly emotional; the attachment to the neighborhood. It was also very respectable.

Dyck read what the North Fork zoning stated. He said they needed to look at that and what that would look like if it was to be considered a residential business because it was a residential area. He recognized that they were going for a camp and retreat center but he also recognized that what the North Fork had done, and what they wanted for their community, the board had to see how they would make everything fit. They then had to decide what works and what doesn't work. He continued to discuss the North Fork zoning regulations and standards. Dyck also said they needed to look at the safety aspect, which was a serious issue, because they were two hours away from getting any help.

Noble asked Mack about the detailed site plan that had been received. They had heard that there would be 2 people per tent, equaling 8 people, and he wondered where the other 4 would be since they had requested 12 people per event.

Allison said that they were planning 8 people in the tents, 3 people in the cabin, and 1 person in the house. Noble asked if that was in addition to the 3 people that lived there now. Allison said there was mostly 2 of them living there. Noble asked if she was going to limit it to 4 retreats per year and she said that was the plan. Noble wanted to confirm that she agreed that the permit would sunset if she sold the property. Allison said that she believed that it was given to the business and not the property. Noble informed her that it rides with the property. Mack noted that they could condition it so that it would go away when the business goes away. Noble asked her to confirm that the site plan was reflective of what they really wanted to do. *[Response was inaudible.]*

Klempel asked Mack if they had ever had a request for a camp and retreat center in a residential area. Mack said yes, and could think of a few in the Whitefish area that were on smaller lots than this but around the same density. A lot of the time they were in agricultural zones where people do have houses. He could not think of any up in the North Fork that they have done.

Dyck said he was looking at, if they were to approve this, he saw that they had two tracts of property and could allow two personal homes and 1 cabin per lot. With that, there would be a maximum of 4 camps and a maximum of 12 people. There would be 4 parking sites and the CUP would sunset when the applicants and the business move (which would need to be conditioned as such). The greatest concern, moving forward with this, was putting those people away from any type of medical safety. He was also concerned about the fire issues. He discussed the details of previous forest fires that had gone through that area.

Liechti said that he would be in support of, on each lot, a single family home, guest cabin and between the two lots, an additional 4 tents/campsites total. They were here for a camp and retreat center. He also suggested a condition that stated no open fires if fire danger was a big concern of the board.

Dyck said it was a residential area and he felt they needed to follow the rules as much as possible with also trying to make everything work for everyone involved. The only compromise that he could find was 1 home and 1 guest cabin per lot. The guest cabin could be for rent. [an unidentified person from the audience asked a question, which was partially inaudible but related to the applicants ability to rent out of her home]. Dyck responded that they could rent the guest cabin but not the personal dwelling.

Dyck also agreed with Netteberg in that he struggled with having to deal with after-the-fact applications. It was easier to work through it the first time through yet they were still trying to figure out what they could and could not do.

Noble said there was confusion because they could go put a house and a guest house on the other lot tomorrow. Mack agreed. Noble pointed out that was all part of the standard but asked if they could still do that if they had the CUP. Mack said they could build a house and a cabin on the other lot, because that was a permitted use. They could have their residential business because that was a permitted use. What they could not have, unless it was approved today, were the 4 canvas tents on the property (for the camp and retreat center) without the CUP. They can have the house and the rental cabin on each of the lots. They were here in front of the board because they wanted more than that. They wanted the 4 tents to be permanent.

Noble asked about adding a condition that stated they could not have the house and the guest cabin as long as the 4 tents were out there. Mack said if they were approved for the CUP, they had standard conditions, and reiterated that what was shown on the site plan would be the only thing that they would be approved for, therefor, they could not build anything else without coming before the board again. Noble said that was a lot less impact than building another house and cabin.

Allison asked if the allowable uses were per tract or parcels. Dyck said they had already walked through that and she had two lots, with the possibility of two homes and two cabins. That was the maximum allowed in that area.

Noble was trying to clarify for everyone that, if the CUP was approved, the site plan was what they were allowed to do. They would not be able to build a second house and guest cabin.

Klempel asked staff how close the nearest dwelling was. Staff discussed this in detail.

Dyck asked for a clarification from the applicant on her proposed bathroom and what that entailed. The applicant replied from the audience but it was not clearly audible.

Dyck asked Klempel if she was concerned about public services to the property. Klempel said that was one of her concerns and the other being that it was a residential area. The people that lived in North Fork all knew the rules when it came to wildlife, bears, fires, and all that. She was concerned about inviting more people to the area that weren't use to that and was concerned that it could become a night time disaster. She was concerned if there was a bear mauling, how long it would take for emergency personnel to get there. People who choose to live there know that. It was their home but it was the bear's home as well and she was struggling. A wooden bear box was not going to keep out a bear. With more people would come more impact and she struggled that it was residential and with the emergency services.

Dyck wanted to add that in a bear situation, a soft sided structure would not hold back any type of wildlife. He was concerned about that as well. He was really concerned over the concept of this being inside a residential area and did not feel like it was a good fit for the area. It was also not a good fit for the community because it was what they had worked through for 20+ years. He felt like it could be viable in another area but not in this place.

Dyck wanted to make a change in the findings of facts and discussed this.

**MOTION TO
AMEND
F.O.F. #8
9:41 PM**

Dyck motioned, seconded by Klempel, to change Finding of Fact #8 to state:

The subject property does not appear to have adequate availability of public services for the proposed use because the property is located within the Flathead County Fire Service Area, fire prevention and suppression techniques would need to be utilized, the Flathead County Sheriff's Office would provide services to the property in the event of an emergency, and medical emergency services do not appear to be adequately available.

**ROLL CALL TO
AMEND F.O.F. #8
9:41 PM**

Motion passed on a 3-2 vote. Noble and Liechti dissented.

**MAIN MOTION
TO ADOPT F.O.F.
(FCU-20-08)
9:41 PM**

Dyck made a motion, seconded by Klempel, to adopt staff report FCU-20-08 as findings of fact, as amended.

**ROLL CALL TO
ADOPT F.O.F.
(FCU-20-08)
9:41 PM**

Motion passed on a 3-2 vote. Noble and Liechti dissented.

**MAIN MOTION
TO DENY
(FCU-20-08)
9:42 PM**

Dyck made a motion, seconded by Klempel, to recommend denial of FCU-20-08.

**ROLL CALL TO
DENY
(FCU-20-08)
9:42 PM**

The motion passed on a 3-2 vote. Noble and Liechti dissented.

OLD BUSINESS
9:47 PM

Board secretary asked them to keep the information from the tabled and postpone files. They will be receiving the new information for the next packets.

NEW BUSINESS
9:47 PM

Mack told the board the planning office had hired a new planning technician and the office was fully staffed now.

Dyck asked that FCU-20-04 be the only file next month because he had a feeling that it was going to be a long meeting. Mack said there was only one other thing on the agenda. Dyck discussed the ability for the board to table a meeting after 10:00 pm because they didn't want to go until 3:00 am. Staff clarified that it was 11:00 pm. Dyck requested that they at least go first and let the others know that they might not get heard due to how late the meeting may go.

Dyck also requested that the BOA have a workshop, with the planning department, to go through some of the gray areas of the regulations for more clarification.

ADJOURNMENT
9:54 PM

Dyck motioned, seconded by Noble, to adjourn the meeting. Motion was passed by quorum. The next meeting will be held on September 1, 2020.



Cal Dyck, Chairman



Angela Phillips, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 9 / 1 /20